

CV 13-3459

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PIERRE NICOLAS ,

Plaintiff,

- against -

CIVIL ACTION:

BLOCK, J.

THE CITY OF NEW YORK, NEW YORK CITY
POICE DEPARTMENT, POLICE
OFFICER JEREMIAH WINTERS (shield
No.:9983)

COMPLAINT

LEVY, M.J.

Jury Trial Demanded

Defendants.
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1. Plaintiff, PIERRE NICOLAS, by his attorney, Robert H. Parker, complains of the Defendants and respectfully sets forth to this Court as follows:

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

PRELIMINARY STATEMENT

2. This action is brought pursuant to the provisions of 42.U.S.C.§1983, and, pursuant to claims for, malicious prosecution, illegal seizure and imprisonment, harassment, intentional infliction of emotional distress, humiliation, racial discrimination and the violation of civil rights. The action arises out of the two false arrests and false imprisonment of the Plaintiff by defendant Police Officer Jeremiah Winters employed by the New York City Police Department.

JURY TRIAL DEMANDED

3. Plaintiff demands trial by jury in this action.

JURISDICTION AND VENUE

4. This action arises under the 4th, 5th, 6th, 8th and 14th Amendments to the United States Constitution, under 42 U.S.C. §§1983 and 1988 and related State Law.

5. The jurisdiction of this Court is predicated upon 28 U.S.C. §1331 and §1343(a)(3) and (4), and upon pendent jurisdiction.

6. Venue lies in this district pursuant to 28 U.S.C. §1391(b).

THE PARTIES

7. The Plaintiff was and still is a resident of Queens, City and State of New York.

8. Upon information and belief, and at all times hereinafter mentioned, the Defendant, City of New York, (hereinafter referred to as "CITY") was and still is a municipal corporation and body politic, organized and existing under the Laws of the State of New York and the Charter of the City of New York.

9. Upon information and belief, and at all times hereinafter mentioned, and on or about February 1, 2010, the Defendant CITY, by virtue of, under and pursuant to the Laws of

the State of New York, and the Charter, and Administrative Code of the City of New York, created and operated The New York City Police Department (hereinafter "NYCPD") for the public benefit and protection of its citizens.

10. Defendant Police Officer Jeremiah Winters shield no.:9983, (hereinafter "Police Officer Winters") who conducted two arrests of the Plaintiff, is a New York City Police officer employed by defendant New York City and based out of the 104 precinct in Queens County New York.

11. At all times relevant hereto, Police Officer Jeremiah Winter mentioned in the prior paragraph was acting under color of State Law and within the scope of his employment.

THE FACTS

12. On February 1, 2010, in the county of Queens county, City and State of New York, defendant police officer Winters lacked probable cause or articulable suspicion to arrest, search and imprison Plaintiff Nicolas.

13. Plaintiff Nicolas is a United States citizen, male and of African American ancestry.

14. On February 1, 2010, Plaintiff Nicolas just left his Ridgewood Queens apartment to go to a local grocery store. Within minutes after leaving his apartment, he placed an urgent call to 911 for assistance because he was accosted by two male strangers on the street who assaulted him.

15. Police Officer Jeremiah Winters first arrived on the scene and immediately and wrongfully assumed that plaintiff Nicolas was the perpetrator.

16. At the time of police officer Winter's arrival, the two men were chasing plaintiff in the middle of the roadway.

17. Plaintiff upon observing the patrol car, ran towards police officer Winter's RMP gesturing at the two strangers chasing him.

18. The two men who were chasing plaintiff, told police officer Winters that plaintiff was the assailant, even though plaintiff was by himself and was outnumbered two to one.

19. Plaintiff explained to police officer Winters that the

two men had yelled derogatory racial names to plaintiff, and then surrounded plaintiff once he complained.

20. One of the men drew a long hunting knife which plaintiff mistook for a gun.

21. Plaintiff struggled with the individual with the knife and the knife fell to the ground.

22. The knife was recovered by police officer Winters, who vouchered it and never tested it for fingerprints or DNA.

23. Police officer Winters illegally and wrongfully assumed the knife belonged to plaintiff Nicolas and charged him with possession of a weapon, menacing, and harassment.

24. Plaintiff Nicolas was arrested, arraigned, and prosecuted for alleged violent crimes.

25. Later that year, on November 14, 2010, while the above mentioned criminal matter was pending, Police Officer Winters arrested plaintiff Nicolas at his apartment for an alleged assault on an individual.

26. Police officer Winters, under oath, stated in police documents, and in open court, that he recovered a golf club - with blood on it -- outside of plaintiff Nicolas' apartment that was used in an assault on the complainant.

27. Police Officer Winters arrested plaintiff Nicolas again for possession of a weapon and felonious assault.

28. At a suppression hearing, after it was known that the

alleged complainant (in the alleged golf club assault), had a blood alcohol content of .17 many hours after the incident, and was noted to have an extremely high amount of cocaine in his system, police officer Winters admitted on the witness stand that the complainant reeked of alcohol.

29. Meanwhile, in the first criminal matter, on February 7, 2011, a Queens county jury heard all of the evidence, including testimony from police officer Winters, and acquitted plaintiff Nicolas of all charges.

30. In the second matter, an ethical assistant district attorney, Thomas Rooney Esq, fulfilled his Brady obligations, and notified plaintiff Nicolas' criminal defense attorney that he discovered that police officer Winters fabricated evidence about the golf club.

31. Furthermore, it was discovered that not one single person complained or stated to police officer Winters that a golf club was used by plaintiff Nicolas to assault or menace anyone.

32. That charge was completely fabricated by police officer Winters.

33. On motion by the assistant district attorney, the second criminal matter was dismissed in its entirety.

34. This ordeal lasted two years and resulted in extreme anguish to the plaintiff, who was facing years in jail.

35. Police officer Winters fabricated evidence in both

criminal matters, immediately assumed that plaintiff was at fault, did not conduct any investigations, disregarded plaintiff's 911 calls.

36. Further, it is believed that police officer Winters was upset at the jury acquittal in the first criminal matter, and thus was motivated to railroad plaintiff in the second criminal matter.

37. It was later learned that a fellow police officer refused to go along with police officer Winter's scheme to fabricate evidence, and that led to dismissal of the second criminal matter.

COUNT ONE

38. As a direct and proximate result of Defendant police officers' constitutionally offensive conduct in the preceding paragraphs, Plaintiff was caused to be brutally arrested, falsely imprisoned and accused, and malicious prosecuted based of his ancestry.

39. For intentional infliction of emotional distress, humiliation, embarrassment, shame, and the mental anguish of being detained and subject to a lengthy prosecution, including, but not limited to having to come back and forth to court numerous times, and testifying on his behalf at a jury trial, Plaintiff seeks compensatory damages, and punitive damages in the amount of one million dollars.

COUNT TWO

40. Plaintiff repeats and realleges the foregoing paragraphs "1" through "39", inclusive, as if they are fully set forth herein at length.

41. The Defendant Police Officer, by having unlawfully and illegally detained and forcibly shackled the Plaintiff without probable cause, and to maliciously prosecute him, including lying under oath at a criminal trial and a suppression hearing, deprived Plaintiff of the rights, remedies, privileges and immunities guaranteed to every citizen of the United States of America, all of which was in violation of 42 U.S.C. § 1983. The rights of the Plaintiff, as guaranteed by the 4th, 5th, 6th, 8th and 14th Amendments to the United States Constitution, and related New York State Law have been violated.

42. The Defendant acted under pretense and color of the State Law and in his individual official capacities. The acts of the Defendant were without authority of law and constituted a severe abuse of his powers. Defendants acted intentionally, willfully, knowingly and with the specific intent to deprive Plaintiff of his constitutional rights as secured by 42 U.S.C. § 1983, and by the 4th, 5th, 6th, 8th and 14th Amendments to the United States Constitution.

43. As a direct and proximate result of the misconduct of

the Defendants as afore described, and the wrongful acts and abuses of authority as detailed above, Plaintiff sustained the damages hereinbefore alleged.

44. Based upon the allegations as set forth herein, Defendants violated Plaintiff's civil rights to be free from false arrest, false imprisonment, malicious prosecution and intentional infliction of emotional distress.

45. Plaintiff seeks damages in the sum of One Million Dollars and exemplary damages of Five Million Dollars.

COUNT THREE

46. Plaintiff repeats and realleges each and every allegation contained in paragraphs of the Complaint numbered "1" through 41" inclusive as if the same were fully set forth at length herein.

47. Upon information and belief, the Defendants have engaged in a long standing and pervasive pattern of constitutionally offensive conduct, including the knowing harassment and prosecution of individuals, without probable cause or authority, and the repeated use of excessive force and abuse, and the failure to conduct even rudimentary investigations, in purportedly performing their duties as employees of the Defendant City.

48. Upon information and belief, the Defendants have engaged in a long pattern of constitutionally offensive conduct, in failing to properly train, supervise, and discipline police officers in proper enforcement of alleged crimes.

49. Upon information and belief and prior to the acts complained of herein, the Defendants City of New York and The New York City Police Department, through supervisory personnel, had knowledge and notice of this pattern of unconstitutional conduct by the individual Defendant police officer Winters, but knowingly failed to take any remedial steps to train, supervise

or discipline such individual to prevent the type of conduct to which they subjected the Plaintiff.

50. Upon information and belief, the acts complained of by Plaintiff herein are a direct and proximate result of the conduct and practices of the Defendants City of New York and/or the New York City Police Department employees and representatives, and constituted tacit authorization of, and gross indifference to, the pattern of unconstitutional conduct by the individual Defendants, and Defendant City of New York and its Police Department, and the knowing failure to train, supervise or properly discipline the individual Defendant.

51. By reason of the foregoing, the Defendant, the City of New York and its Police Department have engaged in an official policy, practice and custom which, through the acts of the individual Defendants, were in furtherance thereof, and have deprived Plaintiff of the rights, remedies, privileges and immunities guaranteed to every citizen of the United States and were in violation of 42 U.S.C. §1983, and have deprived Plaintiff of his rights as guaranteed by the 4th, 5th, 6th, 8th and 14th Amendments to the United States Constitution and related New York State Law.

52. As a direct and proximate result of the official policy, practice and custom of the Defendant City of New York

and its Police Department as alleged herein, Plaintiff sustained damages herein before alleged.

53. Based upon the allegations as set forth herein, the Defendants have violated the Plaintiff's rights to be free from false arrest, false imprisonment, malicious prosecution and intentional infliction of emotional distress.

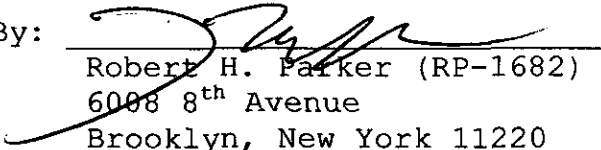
54. Plaintiff seeks compensatory damages in the sum of ONE Million Dollars and exemplary damages of an additional Five Million Dollars.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

- a) On each Count in such sums as may be determined upon the trial of this action, including, but not limited to general damages, special damages and punitive damages, One Million Dollars compensatory damages and Five Million Dollars exemplary damages;
- b) Punitive Damages as to Defendant MUEA, BROOKS and COOPER and CITY for intentional conduct as described above.
- c) For reasonable attorney's fees pursuant to 42 U.S.C. §1988, together with costs and disbursements; and
- d) For such other and further relief as this Court may deem just and proper.

Dated: June 12, 2013

Robert H. Parker, Jr.
Attorney for Plaintiff

By: 
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